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91-49 (1)

No._____

Supreme Court, U.S.
FILED
MAY 20 1991
OFFICE OF THE CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

In Re George L. Karapinka,

Petitioner

PETITION FOR A WRIT OF MANDAMUS

GEORGE L. KARAPINKA
Petitioner pro se
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Morgantown, WV 26505
304-599-8686

48pgs.

This Petition for a Writ of Mandamus is directed against the United States Court of Appeals Judges for the Second Circuit:

Hon. Ellsworth A.Van Graafeiland, U.S.C.J.

Hon. J.Daniel Mahoney, U.S.C.J.

Hon. Reena Raggi, U.S.D.J. Eastern District of New York sitting by designation,

and against:

Hon. Con. G. Cholakis, U.S.D.J. Northern District of New York

Union Carbide Corporation is a respondent.

REASONS FOR GRANTING THIS WRIT OF MANDAMUS

Writ of Mandamus should be granted because the Judges in the U.S. Court of Appeals for the Second Circuit: Hon. Ellsworth A. Van Graafeiland, U.S.C.J., Hon. J. Daniel Mahoney, U.S.C.J., Hon. Reena Raggi, U.S.D. J. for the Eastern District of New York sitting by designation, and Hon. Con. G. Cholakis, U.S.D.J. Northern District of New York against whom this Writ of Mandamus is directed, commited flagrant violations of due process of law. This application to this Court is my only, and last desperate attempt to obtain justice. No other appellate form or appellate court remains for me.

I. The United States Court of Appeals for the Second Circuit Judges and the District Judge for the Northern District of

New York can not violate flagrantly rulings of the Second Circuit and of the Other Authorities

II. There Absolutely are no Grounds for Draconian Injunction Prohibiting me From Filing any Paper in any Federal Court Against Union Carbide Without the Permission of Judge Cholakis

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CITATIONS TO OPINIONS BELOW

The United States Court of Appeals for the Second Circuit Judges dismissed my appeal with their Order of January 22, 1991, a copy of which is anexed as a-1* United States District Judge Con. G. Cholakis dismissed my Complaint with prejudice August 31, 1990, a copy of that Order is anexed as a-7.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec.1651(a).

STATEMENT OF THE CASE

My civil action, 90-CV-322, which claims my personal injury only, injury that is presently lasting and will be lasting with severe consequences in the future, has been filed in the Northern District of New York March 21, 1990; it was

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* Appendix - page, below

assigned to Judge Cholakis. See a-12. My Complaint avers that Union Carbide Corpo-Ration (Union Carbide) through its severe psychological harassment during and after my employment has caused my heart disease that had already resulted in one open heart surgery for the replacement of my aortic valve and most certainly will result in atleast one more open heart surgery in the future. My Complaint does not have anything to do with "the termination of Karapinka's employment with Carbide", "wrongful discharge", or "defamation". Acts of Union Carbide's psychological harassment of me occurred after 1984, and as recently as 1989. See A-86*.

June 7, 1990 Union Carbide filed its Motion to Dismiss Plaintiff's Complaint and

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*Appendix to the Briefs - Page(s)
Ten copies of this Appendix (90-7823) together with ten copies of the Brief of the Appellant have been mailed 11/17/90 to the Clerk of the Second Circuit.

to Enjoin pursuant to Rule 12 of the Federal Rules of Civil Procedure (F.R.C.P.). A-9. In its Memorandum in support of that Motion, containing voluminous matter outside of the pleadings, Union Carbide is trying to argue that the Complaint which is claiming my personal injury to which injury Union Carbide has contributed as recently as 1989, is res judicata because of my unrelated previous civil actions agaist Union Carbide (A-17) which are summarized below. Union Carbide also states that the nonexisting claims of "wrongful discharge" which I do not claim or intend to claim in my Complaint, are time-barred (A-19). Although Judge Cholakis did not admit nor did he explain to me on what subdivision of Rule 12 or any Rule of F.R.C.P. he was treating that Motion, it was clear to me that Union Carbide through that "speaking motion" had been mounting factual attack, well camouflaged from me, on the subject

matter jurisdiction of my Complaint pursuant Rule 12(b)(1), relying solely on misplaced doctrines of res judicata and statute of limitation. I, therefore, requested discovery to show that the jurisdiction existed (A-44,92,97). Judge Cholakis instead of granting that discovery, dismissed my action (A-97), and in addition permanently enjoined me from filing <u>any paper</u> in federal court without his permission (a-9).

In my opposition to Union Carbide's Motion I had also convincingly shown that my previous actions against Union Carbide were totally irrelevant because none of them was in any way related to the present personal injury action and therefore the doctrines of res judicata and statute of limitations were not applicable. Since there were no claims of "termination of employment" there was no basis for failure to state a claim upon which relief can be granted.

Notices of Appeal were filed August 17, and September 28, 1990.

The same facts were presented by me to the Judges of the U.S. Court of Appeals for the Second Circuit in my Brief of the Appellant, in my Reply Brief, my Argument, and my Petition for Rehearing. Union Carbide again maintained in the Court of Appeals its insistance on misplaced doctrines of res judicata and statute of limitations and on permanent injunction. Additionally Union Carbide initiated new litigation in the Court of Appeals about insufficiency of prima faciae tort (see Union Carbide's Brief No. 90-7823, p. 25-27).

The Judges of the Second Circuit dismissed my appeal with their order of January 22, 1991 (a-1), which totally affirmed the Order of Dismissal in the District Court of Judge Cholakis (a-7). My Petition for Rehearing was denied February 19, 1991 (a-10). The Mandate was issued February 27,

1991; no order on mandate was issued as of the date of mailing of this Petition.

Because of the draconian injunction imposed upon me by Judge Cholakis (a-9) and concurred by the Judges of the Second Circuit (a-5, "repetitive, frivolous litigations") I will, therefore, devote some space here to my previous actions against Union Carbide.

Employment Discrimination Action in New Jersey, Civil Action 81-1393

Union Carbide maintaned baselessly in the Northern District of New York and in the Second Circuit that my present personal injury action is res judicata because of my employment discrimination action which had been filed in the U.S. District Court for the District of New Jersey May 6, 1981. The judgment dismissing my action pursuant to 42 U.S.C. Sec. 2000e-5, 2000e-5(g) in the District for New Jersey (A-28,64) is null and void, as I see it now, because the

District Court there did not have any jurisdiction (A47-60). Even Union Carbide argued vigorously then that there was no jurisdiction in the District Court (A-47). Because of my ignorance I had filed the Notice of Appeal on an unappealable order. Union Carbide instead of moving for the dismissal of that appeal, carried that appeal through the expensive briefing-appendix, thus knowingly perpetrating frivolous and expensive litigation.

Patent Assignment Action in the Northern District of New York, 83-CV-1682

My patent related action pursuant to 35 U.S.C. Sec. 261 seeking to annul the assignments to my U.S. Patent 3,709,853 (A-70) and 3,756,998 (A-72), has been filed April 13, 1984 (A-67). The District Court declared these genuine patent assignments to be contracts and dismissed my Complaint with July 10, 1984 Order. The District Court dismissed my Complaint again with the redu-

ndant Order of August 28, 1984. My Notice of Appeal, appealing the dismissal of my Complaint was received by the Clerk of the District Court August 23, 1984 and has been filed by that Clerk, after the filing of the redundant and last Order of dismissal of August 28, 1984, on August 28, 1984. Contrary to 28 U.S.C. Sec. 1295(a)(1) I have mistakenly filed my appeal in the Second Circuit. In its Motion to dismiss my appeal Union Carbide stated fraudulently that the Second Circuit lacked jurisdiction because the appeal was not taken from the final dismissal of my patent assignment action. Because of that fraud U.S. Court of Appeals for the Second Circuit granted that Motion and dismissed my appeal without any explanation. Union Carbide knew well, patent attorney-litigator C. Frederick Leydig signed that Motion, that because of 28 U.S.C. Sec. 1295(a)(1) the Second Circuit did not have any jurisdic-

tion to adjudicate whether the order was final or interlucutory and should have transferred my appeal pursuant to 28 U.S.C. Sec. 1631 to the Federal Circuit which has the jurisdiction over <u>any</u> patent related appeal. Union Carbide perpetrated the same fraud upon this Court by stating in 84-1482 in its Brief in Opposition to the Petition for Certiorari on page 6:

> "In the fall of 1984, Petitioner perfected his appeal to the Court of Appeals for the Second Circuit and Respondent moved promptly to dismiss on the grounds that the Orders appealed from lacked the requisite finality to be appealable within the meaning of 28 U.S.C. Sec. 1291."

Another fraud perpetrated upon this Court is stated by Union Carbide on page 7 of that Brief:

> "The Assignment Documents In Question Are Contracts Subject To The New York Statute of Limitations!"

Perpetration of Fraud Upon the District Court, Action in the Southern District of New York, 86 Civ. 5872

My Complaint charging Union Carbide with perpetration of fraud upon the U.S. Dist-

rict Court for the Northern District of New York in my previous suit, 83-CV-1682, was filed in the Southern District of New York. See A-74. Due to my ignorance then I had omitted the jurisdictional basis for my action. The service was also improper; it was accomplished outside the Sothern District of New York. Union Carbide moved to dismiss pursuant to Rule 12 of F.R.C.P. supporting that Motion with matter outside of the pleading, it appearently was claiming res judicata. My request to the District Court to state on what subdivision of Rule 12 it is treating that Motion, has been totally fruitless. I had wrongfully assumed that because matters outside of the pleadings were submitted to the Court, the Court converted that Motion to Rule 56 motion for summary judgment. Only recently I found out that Union Carbide had mounted a well camouflaged from me factual attack on the jurisdiction of my Complaint in that

Motion and the District Court had dismissed my Complaint pursuant to Rule 12(b)(1) for lack of jurisdiction, without informing me about that. Because I did not know the ground of the dismissal, I have filed as I see it now, a useless appeal in the Second Circuit, No. 87-7002 (not 87-0838 as stated in a-5). Union Carbide could have dismissed that appeal with a simple motion for lack of jurisdiction. No jurisdiction in the district court, therefore no jurisdiction in the court of appeals. Instead it filed its Brief for Defendant-Appellee by the patent attorney C. Frederick Leydig of Leydig, Voit & Mayer, 1 IBM Plaza, Chicago, Ill. 60611. The names of the following experienced attorneys appear on that Brief: Charles H. Mottier, Robert E. Crotty and Patricia C. Tuohy. Thus prolonging by Union Carbide this fruitless and frivolous litigation. Moreover, in that Brief Union Carbide had asked the Court of Appeals to

impose sanctions against me for "frivolous and vaxatious" litigation. By the Order of April 2, 1987 the Second Circuit dismissed my appeal, 87-7002, imposed sanction of double costs and $500 payable to Union Carbide. The District Court did not issue the order on mandate.

Patent Infringement Action in the Wetern District of Pennsylvania, No. 87-1981.

My patent infringement suit pursuant to 35 U.S.C. Sec. 271(a)(b) charging Chevron Corporation in infringement of my U.S. Patent 3,709,853, and Union Carbide which illegally licensed that Patent to Chevron with inducement to infringe, has been filed in the Western District of Pennsylvania September 21, 1987. See A-78. After my improper service of process (service outside of the District) and before the proper service on Union Carbide's and Chevron's places of business in the District, Union Carbide filed its Motion to Dismiss pursuant to Rule 12(b) and Rule 8(c) supported by matters

outside of the pleading. That Motion was signed by the individuals that were never admitted to practice before that District Court. My response to that Motion to Dismiss was not filed by the Clerk and therefore had not been considered by the District Court. Without an oral argument or any other chance to be heard by the District Court, and before all the parties were properly served with process within the prescribed by law period, that District Court dismissed my Complaint with its Order of November 23, 1987. See Union Carbide's Appendix, AP-48. By that Order I was enjoined from filing further patent infringement actions against Union Carbide in any court without permission of that District Court. I was also ordered to pay $1000 each to Union Carbide and to Chevron which at that time was not properly served and therefore did not answer to the process in any form.

In my action to annul the assignment

of my U.S. Patent 3,709,853 in the Northern District of New York, Union Carbide had argued vigorously that the assignment A-70 was not an assignment but a contract; the District Court agreed with Union Carbide. See supra page 7. If that was the case, the then Union Carbide did not have an assignment to my Patent because this Court in Crown Die & Tool Co. v. Nye Tool & Machine Works, 261 U.S. 24 (1923) had ruled that the patent assignment can not be a contract at the same time. This infringement action therefore, was proper, because Union Carbide can not license my Patent to Chevron without having a proper assignment.

Due to my ignorance then, I have filed my appeal in the U.S. Court of Appeals for the Third Circuit instead in the Federal Circuit pursuant to 28 U.S.C. Sec. 1295 (a)(1). Instead of transferring that appeal pursuant to 28 U.S.C. Sec. 1631 to the Federal Circuit, the Third Circuit without ha-

ving any jurisdiction dismissed it on the merits April 29, 1988. See Union Carbides Appendix 90-7823, AP-51.

My Petition for a Writ of Mandamus was denied by the Federal Circuit November 18, 1988 (AP-53).

ARGUMENT

I. The United States Court of Appeals for the Second Circuit Judges and the District Judge for the Northern District of New York can not violate flagrantly rulings of the Second Circuit and of the Other Authorities

My Complaint claims only personal injury and it does not absolutely claim "wrogful discharge" nor "termination of employment" (a-12, A-4). These claims were created by Union Carbide to suggest that there were employment claims for dismissal for failure to state a claim upon which relief can be granted or for dismissal on statute of limitations. For that purpose Union Carbide fabricated by misquoting Claim 3 of my Complaint:

> "Therefore, Mr. Karapinka's claim that he "had been dismissed by Union Carbide intentionally some five month before (his) eligibility for Union Carbide's pension, (which) caused (him) and is still causing (him) psychological distress ..." See Union Carbide's Brief, 90-7823, page 22.

My true Claim 3 reads:

> "The fact that I have been dismissed by Union Carbide intentionally some five month before my eligibility for Union Carbide's pension, caused me and is still causing me psychological distress because of the insecurity for my old age." See a-13.

That Claim is concerned with the "psychological distress because of the insecurity for my old age" and definitely not with any "wrongful discharge" nor "employment termination". Therefore Judge's Cholakis statement in a-8 regarding employment claims:

> "1. plaintiff's claims are time-barred under any conceivable statute of limitations;" and
> "3. plaintiff's claims regarding termination of his employment wth Union Carbide do not state a claim upon which relief can be granted under the law of any relevant state."

is without any foundation so is also the statement of the three Court of Appeals

Judges in their Order of Dismissal, see a-3, point 2.

In order not to leave any trace of the doubt in Judge's Cholakis mind that my Complaint claimed only personal injury perpet rated upon me by Union Carbide, I had requested him for permission during the oral argument to amend my Complaint:

> "Your Honor, the reason that I brougth up the fact that I was employed before for some 12 years by Union Carbide in my complaint was to show the relationship between myself and Union Carbide and that I was injured by Union Carbide while I was employed and after the employment. If Your Honor would like me to stress that point more forcefully, I would be willing to file a more definite statement to that effect or else amend my complaint. See A-91,92. (Emphasis added)

The doctrine of statute of limitations is completely unapplicable to my Complaint My Complaint and my Affidavit clearly show that Union Carbide has caused and is causing my heart disease, the effects of which disease are present now and will be present in the future with severe consequences.

See a-12, A-36. The U.S. Court of Appeals has ruled in Wilson v. John-Manville Sales Corp., 684 F.2d 111, 119 (D.C. Cir. 1982) that statute of limitations does not apply to the above situation. The Second Circuit in Riciutti v. Voltarc Tubes, Inc., 277 F.2d 809, 813 (2nd Cir. 1960) is in complete agreement with the above ruling. Union Carbide has caused harm to me as recently as 1989 (A-86).

Union Carbide is employing res judicata and statute of limitations, supported by the matters outside of my Complaint, as the factual attack on the jurisdiction of my Complaint pursuant to Rule 12(b)(1) of F.R.C.P. In that situation the desiring party should be granted discovery. Williamson v. Tucker, 645 F.2d 404, 414 (5th Cir. 1981); Budde v. Ling-Temnco-Vought, Inc., 511 F.2d 1033, 1035 (10th Cir. 1975); Eaton v. Dorchester Develop, Inc., 692 F. 2d 727, 731 (1982). Those and other ru-

lings are summarized in 2A Moores Federal Practice, 2nd Ed. 1990, 12.07(2.-1) page 12-50:

> "Dismissal may not be granted until the party asserting jurisdiction is permitted an opportunity to demonstrate that jurisdiction exists. Reasonable discovery for this purpose should be allowed, and failure to permit such discovery is usually treated as reversible error."

During the oral argument I had requested Judge Cholakis for such a discovery:

> "It appears to me that Union Carbide is attacking, is factually attacking the jurisdiction of my complaint. If that is the fact of the matter, I request this court to permit me discovery, in which discovery I am pretty sure additional evidence will be discovered and I can submit it to this court in addition in opposition to this motion." See A-44, A-92. (Emphasis added)

Another request during the same argument:

> "Your Honor, as I mentioned before, I would like to have a discovery because the records of Union Carbide will reveal that this action of mine in this court, this personal injury action is very proper." See A-97.

Judge Cholakis had denied me that discovery and the three Court of Appeals Judges concurred in that ruling. This is the flag-

rant disregard of due process of law.

Union Carbide moved pursuant to Rule 12 of F.R.C.P. (A-9) for the dismissal of my Complaint and supporting that Motion by matters outside of the pleading. Judge Cholakis and the Secod Circuit Court of Appeals Judges scruplously avoid the subdivision of Rule 12 on which the dismissal (a-7) and the affirmation are based (a-1). Both rulings rely entirely on res judicata and statute of limitations, and yet both of those terms are not mentioned once in the entire Rule 12. In Davis v. Zahradnick, 600 F.2d 458 and in Maggette v. Dalsheim, 709 F.2d 800,802 (2nd Cir. 1983) the Court of Appeals had admonished the District Courts to explain clearly the dismissal pursuant to Rule 12 to the prisoner pro se plaintiffs. In my case Judge Cholakis and the Court of Appeals for the Second Circuit Judges by avoiding the mention of subdivision of Rule 12 on which subdivision

my Complaint had been dismissed, flagrantly violated the ruling of the same Second Circuit in Maggette v. Dalsheim. It is possible that the Second Circuit Judges E. A. Van Graafeiland, J.D. Mahoney, and R. Raggi, and Judge Cholakis determined since I was not a prisoner pro se plaintiff but a chemist pro se on whose inventions Union Carbide had realised over half a billion dollars in profits and for which Union Carbide paid me only in psychological harassment resulting in my heart disease (a-1), I was not entitled to the same treatment as the prisoner Maggette.

II. There Absolutely are no Grounds for Draconian Injunction Prohibiting me From Filing any Paper in any Federal Court Against Union Carbide Without the Permission of Judge Cholakis

The facts clearly show that there has been no basis for the imposition of the draconian injunction by Judge Cholakis (a-9) and its affirmation by the Court of Appeals Judges (a-5).

Ths New Jersey discrimination in employment action (81-1393) pursuant to 42 U.S.C. Sec. 2000e-5, over which the District Court for the District of New Jersey did not have any jurisdiction and which is totally irrelevant to this Northern District of New York (90-322) action, has been neither repetitive nor frivolous. Futhermore, how can the patent assignment action in the Northern District of New York, 83-CV-1682 pursuant to 35 U.S.C. Sec. 261; or the patent assignment related action charging Union Carbide with perpetration of fraud upon the District Court, 86 Civ. 5872, Southern District of New York; or patent infringement action pursuant to 35 U.S.C. Sec. 271(a)(b), No. 87-1981 Western District of Pennsylvania; and this personal injury action, 90-CV-322 Northern District of New York be repetitive and frivolous.

Comparison of my situation by the Court of Appeal Judges to that of In re Martin-

Trigona, 737 F.2d 1254 (2nd Cir. 1984) and the imposition and affirmation of the draconian injunction as the result of which I will be on the mercy of one Judge Cholakis without any recourse to any court of appeals, is aflagrant miscariage of justice and a flagrant violation of due process of law.

I find the part of Judge Cholakis Order dealing with the injunction very unreasonable. Before I can file any paper (note the last sentence in a-9) concerning Union Carbide in any federal court in the entire United States (what a jurisdiction for a district judge) I have by a letter to Judge Cholakis, without any record being kept of that letter, ask that Judge for permission to file that paper. He may ignore that letter, or refuse the permission to file that paper. In any event I can not appeal that refusal, a final dismissal of my application, to any court of appeals.

CONCLUSION

For all the foregoing reasons, I the petitioner pro se respectfully request this Court to grant this Petition for a Writ of Mandamus against the United States Court of Appeals for the Second Circuit Judges: Hon. Ellsworth A. Van Graafeiland land, U.S.C.J., Hon. J. Daniel Mahoney, U. S.C.J., Hon. Reena Raggi, U.S.D.J. for the Eastern District of New York sitting by designation and to vacate their Order of January 22, 1991; and against United States District Judge for the Northern District of New York Con. G. Cholakis and to vacate his Order of August 31, 1990 and to direct that Judge to grant the discovery.

Respectfully submitted,

Date: _____

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APPENDIX

JDM NDNY

90-cv-322

GOLDMIS

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 22nd day of January, one thousand nine hundred and ninety-one.

PRESENT: HONORABLE ELLSWORTH A. VAN GRAAFEILAND,

HONORABLE J. DANIEL MAHONEY,

Circuit Judges.

HONORABLE REENA RAGGI,*

District Judge.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED
JAN 22 1991
Elaine B. Goldsmith, Clerk

*United States District Judge for the E. D. of N.Y., sitting by designation.

GEORGE L. KARAPINKA,

Plaintiff-Appellant

- against - No. 90-7823

UNION CARBIDE CORPORATION,

Defendant-Appellee

Appeal from the United States District Court for the Northern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said district court be and it hereby is AFFIRMED.

1. Plaintiff-appellant George L. Karapinka, pro se, appeals from an order of the United States District Court for the Northern District of New York, Con. G. Cholakis, Judge, entered August 31, 1990 and a judgment

of that court entered September 11, 1990 which dismissed his complaint with prejudice and incorporated the terms and conditions of the preceding order. That order, inter alia enjoined Karapinka "from filing, serving, prosecuting or maintaining in any federal court any future action against defendant Union Carbide Corporation based upon his employment with Union Carbide or the termination of that employment without prior permission from this Court."

2. The district court dismissed Karapinka's complaint because, inter alia, his claims "are time-barred under any conceivable statute of limitations." The complaint primarily alleges wrongs inflicted upon Karapinka by defendant-appellee Union Carbide Corporation ("Carbide") in conection with the termination of Karapinka's employment by Carbide, which occurred in October 1971. If these allegations stated a cause of action under the law of any state whose law might apply, they would be governed

by, at most a six-year statute of limitations. That is the period applicable to an action for which no limitation is specifically prescribed by New York law. N.Y. Civ. Prac. L. 213(1) (McKinney 1990); see also N.J. Stat. Ann. 2A:14-1 (West 1987); W.Va. Code 55-2-12 (1981). Karapinka alleges that he is still discovering new forms of damage caused by Carbide's alleged wrongful conduct. These allegations do not fall, however, within any of the statutes adopting a "continuous injury" rule, and are thus subject to the general rule that a cause of action accrues at the time of injury. As Karapinka commenced this action on March 21, 1990 over six years after any of the alleged wrongs by Carbide, his employment-related claims are time-barred.

3. Karapinka's complaint also alleges that Carbide made derogatory statements about him. The statute of limitations for defamation is one year. N.Y. Civ. Prac. L. 215(3) (Mckinney 1990); N.J. Stat. Ann. 2A:14-3 (West 1987); W.V.

Code 55-2-12 (c) (1981). Since Karapinka alleges no defamatory statement within one year of the commencement of this action, his defamation claim is also time-barred.

4. In dismissing Karapinka's complaint, the district court also relied on the grounds of res judicata and failure to state a claim upon which relief can be granted. We need not deal with those issues in detail, in view of our determination of the limitations question. In any event, they were correctly decided.

5. Since Karapinka has a history of repetitive, frivolous litigation, see, e.g., Karapinka v. Union Carbide, No. 86 Civ. 5523* (S.D N.Y. September 23, 1986), aff'd No. 87-0838# (2d Cir. April 2, 1987), the district court properly enjoined him from pursuing any further action in the federal courts against Carbide concerning his employment with Carbide,

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*The true number of the action is 86 Civ. 5872

#The true number of that appeal is 87-7002

or the termination of that employment, without first obtaining leave of the district court. See In re Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir. 1984).

/s/
Hon. Ellsworth A. VanGraafeiland, U.S.C.J.

/s/
Hon. J. Daniel Mahoney, U.S.D.J.

/s/
Hon. Reena Raggi, U.S.D.J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK C O P Y

GEORGE L. KARAPINKA,
Plaintiff : 90-CV-322 (CGC)
-against-
UNION CARBIDE CORPORATION, : ORDER
Defendant.

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
AUG 31 1990
AT___O'CLOCK___.M.
GEORGE A. RAY, CLERK
ALBANY

The defendant Union Carbide Corporation by its attorneys Kelley Drye & Warren, having duly moved for an order: (1) pursuant to Rule 12 of the Federal Rules of Civil Procedure, dismissing plaintiff's complaint against defendant Union Carbide Corporation with prejudice; and (2) permanently enjoining plaintiff from filing, serving, prosecuting or maintaining any future action against defendant Union Carbide Corporation without prior permission of

this Court.

And after due deliberation having been had thereon, now it is

ORDERED that the motion be and the same hereby is granted to the extent and for the reasons set forth by this Court at the hearing on defendant Union Carbide's motion, and it is further

ORDERED that plaintiff George L. Karapinka's complaint against defendant Union Carbide Corporation is dismissed with prejudice upon the grounds that:

1. plaintiff's claims are time-barred under any conceivable statute of limitations;
2. plaintiff's claims are barred by principles of res judicata, because they have been previously litigated and dismissed with prejudice; and
3. plaintiff's claims regarding termination of his employment with Union Carbide do not state a claim upon

which relief can be granted under the law of any relevant state; and it is further

ORDERED that plaintiff George L. Karapinka is permanently enjoined from filing, serving, prosecuting or maintaining in any federal court any future action against defendant Union Carbide Corporation based upon his employment with Union Carbide or the termination of that employment without prior permission from this Court. Such permission will only be considered upon application by letter to this Court, with a copy to Kelley Drye & Warren, counsel for Union Carbide, setting forth in detail the basis upon which such permission is sought. Counsel for Union Carbide need not respond unless counsel so desires. Plaintiff may not serve or file any papers unless permission is granted.

SO ORDERED,

/s/

Con. G. Cholakis U.S.D.J.

Dated: Aug. 31, 1990

UNITED STATES COURT OF APPEALS

For The

Second Circuit

At the stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the Nineteenth day of February, one thousand nine hundred and ninety.

Present:

Hon. J. Daniel Mahoney,

Hon. Ellsworth A. VanGraafeiland,

Hon. Reena Raggi,*

Circuit Judges,

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED

FEB 19 1991

Elaine B. Goldsmith, Clerk

GEORGE L. KARPIK.,

Plaintiff-Appellant

-v- DOCKET NO. 90-7823

UNION CARBIDE CORPORATION,

Defendant-Appellee

A petition for rehearing having bee filed by Appellant Pro Se, GEORGE L. KARAPINKA,

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition be and it hereby is DENIED.

/s/

Elaine B. Goldsmith,

Clerk

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* Of the District Court for the Eastern District of New York, sitting by designation.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK C O P Y

GEORGE L. KARAPINKA,
Plaintiff
vs.
UNION CARBIDE CORPORATION,
Defendant

Civil Action
No. 90-CV-322

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED JUDGE CHOLAKIS
MAR 21 1990
J.R. SCULLY, Clerk

COMPLAINT

Jury trial requested.

1. Diversity of citizenship jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1332 (a)(1).

Plaintiff is a citizen of the state of West Virginia and the defendant Union Carbide Corporation, which will be referred to as Union Carbide, is a corporation incorporated under the laws of the state of New York having a principle place of bussiness in the state other than West Vir-

ginia. The matter of controversy exceeds, exclusive of interest, the sum of $100,000.

2. During the last five years of my 12 year employment with Union Carbide I had been subjected to intentional psychological harassment by the officials of Union Carbide that eventually culminated in my dismissal for no ligitimate reason in October of 1971 from my position of research chemist in Bound Brook, N.J. During my employment with Union Carbide my performance rating had been excellent. The intentional psychological harassment started about 1966. The inventions created by me during my employment so far had generated over $500 millions in profits for Union Carbide. The intentional psychological harassment and the dismissal have caused damage to my health, the effects of that damage are lasting presently.

3. The fact that I had been dismissed by Union Carbide intentionally some five

month before my eligibility for Union Carbide's pension, caused me and is still causing me psychological distress because of the insecurity for my old age.

4. Union Carbide's haressment, dismissal, and intentional psychological harm had caused my heart disease which resulted in my open heart surgery for the replacement of aortic valve in August of 1979. As s result of this operation my yearly health insurance premiums for partial insurance, which I pay myself, have been raised to $4000 after 1983.

5. As the result of Union Carbide's malicious and false statements to my potentional employers I could not obtain or keep professional employment after my dismissal by Union Carbide. This fact resulted in my loss of income for several yeears, psychlogical distress that is lasting up to the present.

6. As the result of the lasting psycho-

logical damage which had been caused by Union Carbide and which resulted in my heart dicease my personal life and my intimate life was ruined, and my intellectual capacity was greatly reduced.

7. The fact that Union Carbide had conveyed malicious, false, and derogatory statements about me to American Chemical Society, specially since 1984, had damaged my reputation and caused me psychological harm.

8. I have been recently told by my physician that due to my medical problems, all of which problems had been caused by Union Carbide, I will have to undergo at least one more open heart surgery in the future. This operation beside considerable expenses may entail additional medical problems for me.

THEREFORE I am praying this Honorable Court for judgment and to award me;

(1) demages in the amount of twenty

million dollars;

(2) punative demages in the amount of ten million dollars;

(3) and to supply such other and further relief as may seem just and proper.

Date; 3/16/90

/s/
George L. Karapinka
Plaintiff pro se

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